

# HOUSE . . . . . No. 884

By Mr. Jones of North Reading, petition of Bradley H. Jones, Jr., and others relative to reinstituting capital punishment in the Commonwealth. The Judiciary.

## The Commonwealth of Massachusetts

### PETITION OF:

Bradley H. Jones, Jr.	Susan Williams Gifford
Mary S. Rogeness	Robert S. Hargraves
George N. Peterson, Jr.	Daniel K. Webster
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In the Year Two Thousand and Five.

### AN ACT RELATIVE TO REINSTITUTING CAPITAL PUNISHMENT IN THE COMMONWEALTH.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 265 of the General Laws, as appearing in  
2 the 2002 Official Edition, is hereby amended by inserting after  
3 section 2 the following new section:—

4 Section 2A.

5 In all cases of murder in the first degree in which the penalty of  
6 death may be authorized under section 2 of this chapter, and in  
7 which the commonwealth seeks to impose the penalty of death,  
8 the indictment or indictments shall specify which of the aggra-  
9 vating circumstances set forth in section 69 of chapter 279 are  
10 alleged to be present. Only so much of the indictment as alleges

11 the offense of murder in the first degree, and not the aggravating  
12 circumstances, shall be presented to the jury during their delibera-  
13 tion as to the guilt or innocence of the defendant. That portion of  
14 the indictment which sets forth the aggravating circumstances  
15 shall be presented to the jury only during the presentencing pro-  
16 ceedings in accord with section 68 of chapter 279.

1 SECTION 2. Chapter 279 of the General Laws, as so  
2 appearing, is hereby amended by striking section 60 and inserting  
3 in place thereof the following section:—

4 Section 60.

5 The punishment of death shall be inflicted by intravenous injec-  
6 tion of a substance or substances in a lethal quantity sufficient to  
7 cause death and until such prisoner is dead.

1 SECTION 3. Chapter 211D of the General Laws, as so  
2 appearing, is hereby amended by adding the following new sec-  
3 tion:—

4 Section 16.

5 (a) The commonwealth shall provide legal services to:

6 (1) any persons who are indigent and who have been charged  
7 with an offense for which capital punishment is sought; and

8 (2) any persons who are indigent, have been sentenced to death  
9 and who seek appellate or collateral review.

10 (b) The committee for public counsel services shall be the  
11 appointing authority and shall appoint staff attorneys, members of  
12 the private bar or both.

13 (c) The appointing authority shall:

14 (1) solicit applications from all attorneys qualified to be  
15 appointed in the proceedings specified in subsection (a).

16 (2) draft and at such times as it may deem necessary, but at  
17 least annually, publish rosters of all applicants determined to be  
18 qualified attorneys.

19 (3) draft and at such times as it may deem necessary, but at  
20 least annually, publish procedures by which attorneys shall be  
21 appointed and standards governing the qualifications and perfor-  
22 mance of such appointed counsel. Such standards of qualification  
23 and performance shall include, but need not be limited to:

24 (A) membership in the bar of the commonwealth or admission  
25 to practice pro hac vice;

26 (B) knowledge and understanding of pertinent legal authorities  
27 regarding the issues in capital cases in general and any case to  
28 which an attorney may be appointed in particular;

29 (C) skills in the management and conduct of negotiations and  
30 litigation in homicide cases;

31 (D) skills in the investigation of homicide cases, the back-  
32 ground of clients, and the psychiatric history and current condi-  
33 tion of clients;

34 (E) skills in trial advocacy, including the interrogation of  
35 defense witnesses, cross examination, and jury arguments;

36 (F) skills in legal research and in the writing of legal petitions,  
37 briefs, and memoranda; and

38 (G) skills in the analysis of legal issues bearing on capital  
39 cases;

40 (4) Periodically review the rosters, monitor the performance of  
41 all attorneys appointed, and delete the name of any attorney who:

42 (A) fails satisfactorily to complete regular training programs on  
43 the representation of clients in capital cases;

44 (B) fails to meet performance standards in a case to which the  
45 attorney has been appointed; or

46 (C) fails otherwise to demonstrate continuing competency to  
47 represent clients in capital cases;

48 (5) conduct or sponsor specialized training programs for attor-  
49 neys representing clients in capital cases;

50 (6) appoint two attorneys, lead counsel and co-counsel, to rep-  
51 resent a client in a capital case after the relevant stage of proceed-  
52 ings, promptly upon receiving notice of the need for the  
53 appointment from the relevant state court; and

54 (7) report such appointment or the client's failure to accept  
55 counsel in writing to the court requesting the appointment.

56 (d) Upon receipt of notice from the appointing authority that an  
57 individual entitled to the appointment of counsel under this sec-  
58 tion has declined to accept such an appointment, the court  
59 requesting the appointment shall conduct, or cause to be con-  
60 ducted, a hearing, at which the individual and counsel proposed to  
61 be appointed under this section shall be present, to determine the

62 individual's competency to decline that appointment, and whether  
63 the individual has knowingly and intelligently declined it.

64 (e) (1) The appointing authority shall maintain two rosters of  
65 attorneys: one roster listing attorneys qualified to be appointed for  
66 the trial and sentencing stages of capital cases, the other listing  
67 attorneys qualified to be appointed for the appellate or collateral  
68 review stages. Each of the rosters shall be divided into two parts,  
69 one listing attorneys qualified to be appointed as lead counsel, the  
70 other listing attorneys qualified to be appointed as co-counsel.

71 (2) An attorney qualified to be appointed lead counsel at the  
72 trial or sentencing stages shall:

73 (A) be a trial practitioner with at least five years of experience  
74 in the representation of criminal defendants in felony cases;

75 (B) have served as lead counsel or co-counsel at the trial or  
76 sentencing stages in at least two homicide cases tried to a jury;

77 (C) be familiar with the law and practice in capital cases and  
78 with the trial and sentencing procedures in the commonwealth;

79 (D) have completed such training or refresher courses in cur-  
80 rent developments in the representation of capital defendants at  
81 the trial or sentencing stages as the appointing authority shall  
82 require; and

83 (E) demonstrate the proficiency and commitment necessary to  
84 providing legal services in capital cases.

85 (3) An attorney qualified to be appointed co-counsel at the trial  
86 or sentencing stages shall:

87 (A) be a trial practitioner with at least 3 years of experience in  
88 the representation of criminal defendants in felony cases; and

89 (B) meet the standards in paragraphs (2)(C), (D) and (E) for  
90 lead counsel at the trial or sentencing stages.

91 (4) An attorney qualified to be appointed lead counsel at the  
92 appellate or collateral review stages shall:

93 (A) be an appellate practitioner with at least 5 years of experi-  
94 ence in the representation of criminal clients in felony cases at the  
95 appellate or collateral review stages;

96 (B) have served as lead counsel or co-counsel at the appellate  
97 or collateral review stages in at least 3 cases in which the client  
98 had been convicted of a felony offense;

99 (C) be familiar with the law and practice in capital cases and  
100 with the appellate and collateral review procedures in the courts  
101 of the commonwealth and in federal court;

102 (D) have completed such training or refresher courses in cur-  
103 rent developments in the representation of capital clients at the  
104 appellate and collateral review stages as the state appointing  
105 authority shall require; and

106 (E) demonstrate the proficiency and commitment necessary to  
107 providing legal services in capital cases.

108 (5) An attorney qualified to be appointed co-counsel at the  
109 appellate, collateral or unitary review stages shall:

110 (A) be an appellate practitioner with at least 3 years of experi-  
111 ence in the representation of criminal clients in felony cases at the  
112 appellate or collateral review stages; and

113 (B) meet the standards in paragraphs (4)(C), (D) and (E) for  
114 lead counsel at the appellate or collateral review stages.

115 (f) (1) Attorneys appointed from the private bar shall be:

116 (A) compensated for actual time and service, computed on an  
117 hourly basis and at a reasonable rate in light of the attorney's  
118 qualifications and experience and the local market for legal repre-  
119 sentation in cases reflecting the complexity and responsibility of  
120 capital cases;

121 (B) reimbursed for expenses reasonably incurred in the repre-  
122 sentation of the client including the costs of law clerks and parale-  
123 gals reasonably needed in the representation of the client; and

124 (C) reimbursed for the costs of investigators and experts whose  
125 services have been approved in advance by the court and are rea-  
126 sonably needed in the representation of the client.

127 (2) Payments under subsection (f)(1):

128 (A) with respect to law clerks and paralegal, shall be computed  
129 on an hourly basis reflecting the local market for such services;  
130 and

131 (B) with respect to investigators and experts, shall be commen-  
132 surate with the schedule of fees paid by state authorities for such  
133 services.

134 (g) Appointed attorneys from the private bar shall receive  
135 prompt payment for legal services and reimbursement for  
136 expenses and support services upon the submission of periodic  
137 bills, receipts, or other appropriate documentation to the

138 appointing authority or other appropriate state agency. The  
139 appointing authority shall promptly resolve any disputes with  
140 respect to such bills.

1 SECTION 4. Chapter 279 of the General Laws, as so  
2 appearing, is hereby amended by striking sections 68 through 71  
3 and inserting the following new sections:-

4 Section 68.

5 Upon a plea or verdict of guilty of murder committed with  
6 deliberately premeditated malice aforethought or murder with  
7 extreme atrocity or cruelty by an individual who has attained the  
8 age of 18 years at the time of the murder and who is not convicted  
9 under the provisions of the felony murder rule, in cases where the  
10 commonwealth has alleged in its indictment or indictments the  
11 presence of one or more of the aggravating circumstances set forth  
12 in section 69 of this chapter, a presentence hearing shall be con-  
13 ducted before the jury before which the case was tried; provided,  
14 however, that if in the opinion of the judge presiding at the pre-  
15 sentence hearing, it is impossible or impracticable for the trial  
16 jury to sit at the presentence hearing, or if the matter of guilt was  
17 determined by a plea of guilty rather than by a jury, a new jury  
18 shall be impanelled to sit at the presentencing hearing. The selec-  
19 tion of that jury shall be according to the laws and rules governing  
20 the selection of a jury for the trial of a capital case. A presentence  
21 hearing need not be conducted if the commonwealth determines  
22 either that it cannot prove beyond a reasonable doubt the existence  
23 of one or more of the aggravating circumstances set forth in sec-  
24 tion 69 of this chapter, or that the penalty of death should not be  
25 imposed, in which case the court shall impose the sentence of  
26 imprisonment for life as provided in section 2 of chapter 265.

27 During the presentence hearing, the only issue shall be the  
28 determination of the punishment to be imposed. During such  
29 hearing the jury shall hear all additional relevant evidence in miti-  
30 gation of punishment including evidence relevant to any statutory  
31 mitigating circumstance set forth in paragraph (b) of section 69 of  
32 this chapter, and evidence relevant to any other aspect of the  
33 defendant's character or record or any of the circumstances of the  
34 offense that the defendant or the commonwealth may proffer as a  
35 basis for a sentence less than death, regardless of its admissibility

36 under the rules governing the admission of evidence at criminal  
37 trials. During such hearing, the jury shall also hear such evidence  
38 in aggravation of punishment as is relevant to any statutory aggra-  
39 vating circumstance set forth in paragraph (a) of said section 69,  
40 and which is alleged in the indictment; provided, however, that  
41 only such evidence in aggravation of punishment as the common-  
42 wealth has made known to the defendant prior to his trial shall be  
43 admissible; and provided further, that said evidence is otherwise  
44 admissible according to the rules governing the admission of evi-  
45 dence at criminal trials. The jury shall also hear arguments by the  
46 defendant or his counsel or both and by the commonwealth  
47 regarding the punishment to be imposed. The commonwealth and  
48 the defendant or his counsel shall be allowed to make opening  
49 statements and closing arguments at the presentence hearing. The  
50 order of those statements and arguments and the order of presenta-  
51 tion of evidence shall be the same as at trial.

52 Upon the conclusion of evidence and arguments at the presen-  
53 tence hearing, the court shall instruct the jury orally as to, and  
54 shall provide to the jury in writing copies of, any statutory aggra-  
55 vating circumstance or circumstances which are set forth in the  
56 indictment and which it determines to be warranted by the evi-  
57 dence. The court shall instruct the jury that it may choose to find  
58 that the penalty of death shall be imposed upon the defendant, or  
59 it may choose not to find that the penalty of death be imposed on  
60 the defendant, but that it may not find that the penalty of death  
61 shall be imposed unless it shall first make a unanimous determina-  
62 tion of the existence of one or more of the aggravating circum-  
63 stances set forth in section 69 of this chapter and the indictment,  
64 beyond a reasonable doubt. The jury shall further be instructed  
65 that if it finds the existence of such an aggravating circumstance  
66 beyond a reasonable doubt, it must then consider all of the evi-  
67 dence presented to it relevant to any of the mitigating circum-  
68 stances set forth in paragraph (b) of section 69 of this chapter, or  
69 to any other mitigating circumstance and determine whether, in  
70 view of all the relevant circumstances of the offense and of the  
71 defendant, the sentence shall be life imprisonment or death. The  
72 jury shall further be instructed that the penalty of death may not  
73 be imposed unless it unanimously finds after a review of all of the  
74 evidence of mitigation proffered as a basis for a sentence less than

75 death, that the penalty of death should be imposed. If the jury is  
76 unable to reach a unanimous verdict, the court shall impose the  
77 sentence of imprisonment for life as provided in section 2 of  
78 chapter 265.

79 If its unanimous verdict is to impose the penalty of death, the  
80 jury shall designate in writing, signed by the foreperson of the  
81 jury, the statutory aggravating circumstance or circumstances  
82 which it unanimously found existed beyond a reasonable doubt,  
83 and that the jury after consideration of all of the evidence of miti-  
84 gation relevant to the circumstances of the defendant and the  
85 offense proffered as a basis for a sentence less than death, unani-  
86 mously found that the death penalty should be imposed.

87 After the jury has made its findings, the court shall set a sen-  
88 tence in accordance with section 70.

89 The declaration of a mistrial during the course of the presen-  
90 tence hearing or any error in the presentence hearing determined  
91 or otherwise shall not affect the validity of the conviction.

92 Section 69.

93 (a) In all cases in which the death penalty may be authorized,  
94 the statutory aggravating circumstances are:

95 (1) the murder was knowingly committed on a victim because  
96 of his position as, or while engaged in the performance of his offi-  
97 cial duties as one or more of the following: police officer, special  
98 police officer, parole officer, probation officer, state or federal law  
99 enforcement officer, court officer, firefighter, officer or employee  
100 of the department of correction, officer or employee of a sheriff's  
101 department, officer or employee of a jail or officer or employee of  
102 a house of correction;

103 (2) the murder was committed by a defendant who was at the  
104 time incarcerated in a jail, or a correctional or penal institution, or  
105 the Massachusetts Treatment Center for the Sexually Dangerous  
106 or a facility used for the housing or treatment or housing and  
107 treatment of prisoners; or while on escape, furlough or work  
108 release from such jail, correctional or penal institution or facility;

109 (3) the murder was knowingly committed on a victim because  
110 of his position as, or while engaged in the performance of his offi-  
111 cial duties as a judge, prosecuting attorney, juror, or witness;

112 (4) the murder was committed by a defendant who had previ-  
113 ously been convicted of murder in the first or second degree, or of



114 an offense in any other federal, state or territorial jurisdiction of  
115 the United States which is the same as or necessarily includes the  
116 elements of the offense of murder in the first or second degree;

117 (5) the murder was committed by a defendant who had previ-  
118 ously been convicted of two or more federal or state offenses,  
119 committed on different occasions, for which a sentence of life in  
120 prison or death was authorized by statute;

121 (6) the murder involved torture to the victim or the intentional  
122 infliction of extreme pain prior to death demonstrating a total dis-  
123 regard to the suffering of the victim;

124 (7) the murder was committed by means of a destructive  
125 device, bomb, or explosive planted, hidden, mailed, delivered, or  
126 concealed in any place, area, dwelling, building or structure by the  
127 defendant; or the murder was committed by means such that the  
128 defendant knew or reasonably should have known that his act or  
129 acts would create a grave risk of death or serious bodily injury to  
130 more than one person; or the murder was committed by means of  
131 a machine gun or other automatic weapon;

132 (8) the murder occurred during the commission of or in further-  
133 ance of a violation of the drug trafficking laws of the common-  
134 wealth as set forth in section 32E of chapter 94C, or during the  
135 commission of or in furtherance of an attempt or conspiracy to  
136 violate said drug trafficking laws;

137 (9) the murder was committed as an act of political terrorism,  
138 which include murders committed for the purpose of attacking the  
139 government of the United States or any political subdivision  
140 thereof;

141 (10) the murder was knowingly committed on a victim because  
142 of his position as, or while engaged in the performance of his offi-  
143 cial duties as one of the following: governor or governor-elect,  
144 lieutenant governor or lieutenant governor elect, secretary of the  
145 commonwealth, treasurer of the commonwealth, attorney general,  
146 member of the governor's council, district attorney, representative  
147 or senator in the general court or mayor;

148 (11) the murder was committed by means of a biological, chem-  
149 ical or nuclear agent or device, including but not limited to an act  
150 of terrorism.

151 (b) In all cases in which the death penalty may be authorized,  
152 the mitigating circumstances shall be any factors proffered by the

153 defendant or the commonwealth which are relevant in determining  
154 whether to impose a sentence less than death, including, but not  
155 limited to, any aspect of the defendant's character, propensities, or  
156 record and any of the circumstances of the murder, including but  
157 not limited to the following:

158 (1) the defendant has no significant history of prior criminal  
159 convictions;

160 (2) the victim was a co-conspirator or willing participant in the  
161 defendant's homicidal conduct, or in the criminal conduct which  
162 resulted in the murder;

163 (3) the murder was committed while the defendant was under  
164 extreme duress or under the domination or control of another  
165 which was insufficient to establish a defense to the murder but  
166 which substantially affected his judgment;

167 (4) the offense was committed while the capacity of the defen-  
168 dant to appreciate the criminality of his conduct or to conform his  
169 conduct to the requirements of the law was impaired as a result of:  
170 (a) a mental disease or defect; (b) organic brain damage; (c) emo-  
171 tional illness brought on by stress or prescribed medication; or (d)  
172 intoxication, or legal or illegal drug use by the defendant; which  
173 was insufficient to establish a defense to the murder but which  
174 substantially affected his judgment;

175 (5) the defendant was over the age of 75 at the time of the  
176 murder, or any other relevant consideration regarding the age of  
177 the defendant at the time of the murder;

178 (6) the defendant was battered or otherwise physically or sexu-  
179 ally abused by the victim in connection with or prior to the murder  
180 for which the defendant was convicted and such abuse was a con-  
181 tributing factor in the murder;

182 (7) the defendant was experiencing post-traumatic stress syn-  
183 drome caused by military service during a declared or undeclared  
184 war.

185 Section 70.

186 Where a person is convicted or pleads guilty to a crime which  
187 is punishable by death, a sentence of death shall not be imposed  
188 unless findings in accordance with section 68 are made. Further,  
189 such a sentence shall not be imposed unless the jury finds that  
190 there is conclusive scientific evidence, including physical or other  
191 associative evidence, enabling it to reach a high level of scientific

192 certainty connecting the defendant to the crime. Physical or other  
193 associative evidence may include any tangible image, object, or  
194 item that can be independently examined for the purpose of  
195 obtaining pertinent investigative information. The jury may use  
196 the scientific, physical or other associative, evidence to corrob-  
197 rate the defendant's guilt and need not rely entirely on human evi-  
198 dence and testimony. Where such findings are made and the jury  
199 finds that the death penalty shall be imposed, the court shall sen-  
200 tence the defendant to death unless the court determines that a  
201 sentence of death should not be imposed under section 71. Where  
202 such findings are not made or not unanimously made or where a  
203 sentence of death is not a unanimous finding by the jury, the court  
204 shall sentence the defendant to life imprisonment as provided in  
205 section two of chapter 265.

206 Section 71.

207 (a) The supreme judicial court shall establish, by rule, such  
208 reports or checklists to be utilized by the trial court, the prose-  
209 cuting attorney, and defense counsel prior to, during, and after the  
210 trial of cases in which the death penalty is sought, as it deems nec-  
211 essary to ensure that all possible matters which could be raised in  
212 defense have been considered by the defendant and defense  
213 counsel and either asserted in a timely and correct manner or  
214 waived in accordance with applicable legal requirements, so that,  
215 for purposes of any pretrial review and the trial and post-trial  
216 review, the record and transcript of proceedings will be as com-  
217 plete as possible for a review by the sentencing court and the  
218 supreme judicial court of challenges to the trial, conviction, sen-  
219 tence and detention of the defendant.

220 (b) In any case in which the sentence of death has been  
221 imposed, the trial judge shall conduct a review of the entire record  
222 and shall report to the supreme Judicial court any observations  
223 which it deems pertinent to the question of the appropriateness of  
224 the sentence, including the credibility and effectiveness of mitiga-  
225 tion evidence offered by the defense; the strength of the common-  
226 wealth's case on the merits including observations with respect to  
227 its reliance on circumstantial or eyewitness testimony and on the  
228 possibility, if any, of innocence being subsequently established,  
229 and the possibility of passion or prejudice having affected the  
230 jury's sentencing decision. If, based on the trial court's review of

231 the record, the court determines that despite findings by the jury,  
232 the death penalty should not be imposed, the judge may set aside  
233 the sentence of death and impose a sentence of life imprisonment  
234 without parole. In such case the judges shall set forth in writing  
235 the findings and reasons which support such determination. The  
236 commonwealth shall have a right to appeal to the supreme judicial  
237 court any such determination, and the supreme judicial court may  
238 set aside said determination if it is unsupported by the record of  
239 the case, and may thereafter reimpose the penalty of death.

240 (c) In any case in which a sentence of death has been imposed,  
241 the trial judge may suspend for a period of time or set aside the  
242 penalty of death and impose in its place a sentence of life in  
243 prison without possibility of parole at any time, upon a showing  
244 that there is newly discovered evidence that casts substantial  
245 doubt on the justice of the conviction, or raises the substantial  
246 possibility of innocence being subsequently established, even  
247 though said evidence is not then sufficient to grant a new trial.

248 (d) Nothing in this section shall limit or restrict review, rights  
249 or remedies available through the procedures under Rule 30 of the  
250 Massachusetts Rules of Criminal Procedure.

251 Section 72.

252 (a) In addition to a unified review procedure administered by  
253 the supreme judicial court, the court shall conduct a formal  
254 process to ensure the independent scientific review of all scien-  
255 tific, physical or other associative, evidence in every capital case  
256 in which a sentence of capital punishment is imposed.

257 (b) The court shall create an Independent Scientific Review  
258 (ISR) Advisory Committee which shall draft policies, processes,  
259 and criterion for the ISR Panel for reviewing scientific evidence  
260 used in each capital case in which a sentence of capital punish-  
261 ment is imposed.

262 (c) Members of the ISR Advisory Committee shall be  
263 appointed by the court from a list of nominees submitted by the  
264 governor and shall be recognized experts in the evaluation of  
265 forensic evidence. If any appointed member of the committee is  
266 employed by a commonwealth crime laboratory, said member  
267 shall not participate in the review of any capital case in which said  
268 member's laboratory had involvement. The members of the com-

269 mittee shall appoint an independent expert panel to review each  
270 forensic-science sub-discipline relevant to each case.

271 (d) At the conclusion of any capital trial in which the defendant  
272 has been convicted and a sentence of capital punishment has been  
273 imposed, the ISR Committee shall appoint an ISR Panel which  
274 shall include independent members from each forensic-science  
275 sub-discipline relevant to the particular case. Members of said  
276 panel shall be selected from among recognized and accredited  
277 experts not employed by the commonwealth's state or city crime  
278 laboratories.

279 (e) Once selected, the ISR Panel shall conduct a thorough  
280 review of the collection, handling, evaluation, analysis, preserva-  
281 tion, and interpretation of, and testimony and all other matters  
282 relating to scientific evidence used in the particular case. This  
283 review shall be conducted pursuant to the policies drafted and  
284 adopted by the ISR Advisory Committee. The panel review shall  
285 include, but not be limited to, an examination of the following:

286 (1) whether the integrity of the evidence was sufficient to allow  
287 for consideration of subsequent procedures.

288 (2) whether appropriate guidelines and standards of practice  
289 were followed during crime scene and autopsy procedures; the  
290 recognition, documentation, recovery, packaging, and preservation  
291 of evidence; the examination and comparison of evidence; the  
292 interpretation and reporting of results; and the reconstruction by  
293 experts relying on other examinations or reports.

294 (3) whether any new research or novel science played a role in  
295 the particular case and whether it was appropriately documented  
296 and provided for review under the relevant legal standard.

297 (4) whether the ISR process revealed any specific scientific or  
298 technical issues requiring additional information, or suggesting  
299 that errors may have been made.

300 (f) A copy of the ISR Panel's report shall be provided, upon  
301 completion, to the trial judge, prosecutor, defense attorney, and  
302 the supreme judicial court.

303 (g) If, based on panel's review of the record, the court deter-  
304 mines that despite findings by the jury, the death penalty should  
305 not be imposed, the judge may set aside the sentence of death and  
306 impose a sentence of life imprisonment without parole. In such

307 case, the judges shall set forth in writing the findings and reasons  
308 which support such determination.

309 Section 73.

310 In addition to a review of the entire case pursuant to section  
311 33E of chapter 278, and section 71 of chapter 279, the supreme  
312 Judicial court shall review the sentence of death imposed pursuant  
313 to sections 68, 69, and 70 of chapter 279. If the supreme Judicial  
314 court determines that (1) the sentence of death was imposed under  
315 the influence of passion, prejudice or any other arbitrary factor; or  
316 (2) the evidence does not support the jury's finding of a statutory  
317 aggravating circumstance or circumstances as defined in section  
318 sixty-nine; or (3) the evidence of mitigation warranted the imposi-  
319 tion of a life sentence rather than a sentence of death; or (4) the  
320 weight of the evidence does not warrant a sentence of death the  
321 court shall (1) reverse the sentence of death and remand for a new  
322 presentence hearing pursuant to section 68 of chapter 279; or (2)  
323 reverse the sentence of death and remand to the superior court  
324 department of the trial court for sentence of imprisonment in the  
325 state prison for life. The court shall also have the authority to  
326 affirm the sentence of death.